States v. Loud Hawk, 474 U.S. 302, 106 S. Ct. 648, 88 L. Ed. 2d 640 (1986) the Wyoming Supreme Court said, "[T]he speedy trial guarantee is no longer applicable once charges are dismissed. [Citing *MacDonald*.] In *MacDonald* the United States Supreme Court held that a delay which occurs between the dismissal of a charge and the subsequent refiling of the charge does not count in speedy trial calculations [Citation omitted.] Four years later, the Supreme Court reemphasized that the Speedy Trial Clause has no application to the period of time in which a defendant is neither under arrest nor formally charged. *United States v. Loud Hawk, supra*."

The Wyoming Supreme Court dismissed the credible notion that *Doggett v. United States*, 505 U.S. 647, 112 S. Ct. 2686, 120 L. Ed. 2d 520 (1992), which returned to the principle that one of the purposes of the Speedy Trial Clause was to insure fair trials, had distinguished or implicitly overruled *MacDonald* and *Loud Hawk*. The Wyoming Supreme Court held that calculating the length of delay for speedy trial purposes under *Barker v. Wingo* can never depend, even in part, on delay between the dismissal and refiling of the charge unless the defendant is incarcerated during the period of delay.

REASONS WHY THE WRIT SHOULD BE GRANTED

I. THE WYOMING SUPREME COURT'S DECISION DECIDES AN IMPORTANT FEDERAL QUESTION IN A MANNER INCONSISTENT WITH *BARKER V. WINGO* AND *DOGGETT V. UNITED STATES*, IN THAT THE WYOMING SUPREME COURT DID NOT CONSIDER HOW THE INTERCHARGING DELAY, BETWEEN DISMISSAL IN 1980 AND REFILING IN 2004, WOULD AFFECT THE DEFENDANT'S RIGHT TO A FAIR ADJUDICATION. *BARKER* AND *DOGGETT* REQUIRE THAT IN SOME CIRCUMSTANCES AND FOR SOME PURPOSES, INTERCHARGING DELAY BE CONSIDERED IN MAKING A SPEEDY TRIAL CLAUSE CALCULATION OF "THE LENGTH OF THE DELAY".

A. Pre *Barker v. Wingo* Cases

Prior to the decision of *Barker v. Wingo, supra,* in 1972, the dominant features of speedy trial analysis were the notions of "demand-waiver" and "prosecutorial misconduct". The lower courts had developed the notion that if a defendant sought to overturn a criminal conviction he must have first demanded a speedy trial as a condition of that claim, no matter how long or unreasonable the delay in bringing him to trial had been. *United States v. Hill*, 310 F.2d 601 (4th Cir. 1962). Under the "demand-waiver" theory of speedy trials no speedy trial violation could occur when the defendant failed to demand a speedy trial, and presumably a speedy trial would be given when it was demanded.

Also, if there was some malicious intent by the prosecution in causing the delay, that could be a matter of

significance in determining whether a speedy trial violation occurred.

Both these approaches seemed, in the reported cases, to have a net result of favoring the prosecution, no matter how long the delay, no matter the cause of the delay, and no matter how prejudicial the delay.

B. *Barker v. Wingo*

In *Barker v. Wingo*, 407 U.S. 514 (1972) the Court abandoned the rigid application of the "demand-waiver" theory and the necessity of a finding of prosecutorial misconduct to justify a speedy trial reversal or dismissal. Rather, the Court identified four factors to be weighed, balanced and considered in determining whether a speedy trial violation had occurred: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of the right, and; (4) the prejudice to the defendant. *Barker*, 407 U.S. at 530. These factors were to be applied in light of the interests the speedy trial clause was intended to protect.

The interests the speedy trial clause was intended to protect, identified by the Court in *Barker v. Wingo* were:

1. To prevent oppressive pretrial incarceration;
2. To minimize anxiety and concern of the accused, and;
3. To limit the possibility the defense would be impaired by undue delay.

Barker v. Wingo, 407 U.S. at 532.

Of these three interests "the most serious is the last because the inability of a defendant to adequately prepare

his defense skews the fairness of the entire system". *Barker v. Wingo*, 407 U.S. at 532.

As a result of *Barker v. Wingo*, a number of courts recognized that fair trial was the most important goal of the speedy trial clause and held that in cases where there was filing, dismissal and refiling of the same charge speedy trial time "runs" or should be counted, from the first filing of the same charge. *Branch v. United States*, 372 A.2d 998 (D.C. 1977); *United States v. McKee*, 332 F. Supp. 823 (D. Wyo. 1971); *United States v. Avalos*, 541 F.2d 1100 (5th Cir. 1976).

Since the four factors were required to be weighed, balanced and applied consistent with the purposes of the speedy trial clause, and the most important of those purposes was to ensure adjudicative accuracy, at least in some circumstances intercharging delay, the delay between dismissal and refiling of the same charge, was to be counted. *Barker v. Wingo* called for decisions on a case by case basis, saying that the decision of whether a speedy trial violation has occurred is necessarily an *ad hoc* decision considering all four factors and the purpose of the speedy trial clause.

C. MacDonald and Loud Hawk

Then in, 1982, in *United States v. MacDonald*, 456 U.S. 1 (1982) the Court abandoned the "fair trial" interest and purpose of the speedy trial clause. MacDonald was charged in a military tribunal with the murder of his wife and children while serving in the armed forces. The charge was dismissed and he was discharged from the service. Three and a half years later he was charged as a civilian in U.S. District Court with the same homicides.

The Court refused to consider the intercharging delay in a speedy trial calculation, under *Barker v. Wingo*, saying:

> Inordinate delay between arrest, indictment and trial may impair a defendant's ability to present an effective defense. But the major evils protected against by the speedy trial guarantee exist quite apart from actual or possible prejudice to an accused's defense . . .
>
> The Sixth Amendment right to a speedy trial is thus not primarily intended to prevent prejudice to the defense caused by passage of time; that interest is protected primarily by the Due Process Clause and by statutes of limitations. *MacDonald*, 456 U.S. at p.6.

Only the first two of the interests identified in *Barker v. Wingo* were matters in light of which the *Barker* factors should be considered.

Then, in *United States v. Loud Hawk*, 474 U.S. 302 (1986) the Court reiterated its newfound conviction that fair trial is not an object and purpose of the speedy trial clause, citing *MacDonald*. The holding of *Loud Hawk* is that after dismissal by the trial court, the time taken by protracted proceedings in appellate courts before the dismissal was reversed, does not count for speedy trial purposes.

Based on *MacDonald* and *Loud Hawk*, most state and federal courts held that any time in which charges were not pending should not count in a speedy trial calculation, even if charges were filed, dismissed and refiled. *State v. Brazell*, 480 S.E.2d 64, 68 (S. Car. 1997); *Wooten v. State*, 426 S.E.2d 552 (Ga. 1993); *Clark v. State*, 629 A. 2d 1322

(Md. 1993); *United States v. Reardop*, 787 F.2d 512 (10th Cir. 1986). All of those cases which refuse to count the time between dismissal and refiling of the case also ignore *Barker's* injunction to decide the case based on the four *Barker* factors, and in light of all the circumstances. The "rule" of *MacDonald* and *Loud Hawk*, to not consider intercharging delay, overrode the mandate of a case by case determination.

D. *Doggett v. United States*

In *Doggett v. United States*, 505 U.S. 647, 112 S. Ct. 2686, 120 L. Ed. 2d 520 (1992) the Court returned to the principles of *Barker v. Wingo*, repudiating *MacDonald* and *Loud Hawk's* rejection of fair trial as a proper object and goal of the speedy trial clause. *Doggett* had suffered no significant pretrial incarceration, nor could he claim pretrial anxiety, since he had been unaware of the charges against him for the eight and a half year delay which was in issue in the case. If fair trial was not a proper speedy trial clause function, *Doggett* had no credible speedy trial clause claim.

The Court specifically rejected the Government's position in *Doggett*, which had been current since *MacDonald*, that fair trial was not a proper speedy trial clause concern. At footnote 2 to the majority opinion, the Court stated "[W]e reject the Government's argument that the effect of delay on adjudicative accuracy is exclusively a matter for consideration under the Due Process Clause". *Doggett*, 505 U.S. at p. 655. Instead, returning to *Barker v. Wingo*, prejudice to the defense is a matter of serious concern. Thus, "[C]onsideration of prejudice is not limited to the specifically demonstrable and . . . affirmative proof

of particularized prejudice is not essential to every speedy trial claim". *Doggett*, 505 U.S. at p.655. "Excessive delay", the Court opined, "presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify". *Ibid*

E. Post Doggett Cases

There has been no significant speedy trial clause case from the U.S. Supreme Court since *Doggett*. The great majority of cases which have considered the issue of whether speedy trial time "runs" or is to be counted between the dismissal and refiling of the same charge have held that it should not be counted, despite *Doggett's* mandate that fair trial is a speedy trial clause goal and purpose.

The post-*Doggett* cases including the Wyoming Supreme Court's opinion in this case suffer from the defects of not considering the speedy trial clause in its context, and not considering the proper purposes of the speedy trial clause. These two deficiencies are demonstrated by the Wyoming Supreme Court's decision in this case.

F. The Speedy Trial Clause in Context

The speedy trial clause, found in the Sixth Amendment was written in the context of addressing specific abuses remembered from British history and the colonial experience. Those abuses included long periods of incarceration without trial, living under the shadow of accusation, and the inability to obtain a fair trial due to long delays for which the accused was not responsible. The

Sixth Amendment's speedy trial guarantee Is found in the context of trial rights.

The Sixth Amendment applies, by its terms to "all criminal prosecutions". When the accusation brought in 2004 was the same as that brought in 1980, by the same governmental entity, the same sovereign, it was "a criminal prosecution" unified by identity of parties, identity of charge, identity of sovereign.

As to the other rights guaranteed by the Sixth Amendment, there may be disagreement about the extent of the right, but there are no exceptions to the right. For instance, in *Crawford v. Washington*, 541 U.S. 36 (2004) the Court effectively returned to the historical basis for a confrontation right, and rejected an artificial set of "exceptions" to the confrontation right which confused state and federal hearsay exceptions with effective application of the confrontation clause.

Just as *Roberts v. Ohio*, 448 U.S. 56 (1980) created artificial exceptions to the confrontation clause, which problem was corrected in *Crawford*, so *MacDonald* and *Loud Hawk* created artificial exclusions from a speedy trial calculation. To put it bluntly, the average life expectancy of a person in the last quarter of the eighteenth century was less than forty-five years. The framers of the Constitution and the Bill of Rights did not intend that a case could be tried more than half a lifetime after it was first filed.

Secondly, the purposes of the speedy trial clause include genuine "fair trial" and "adjudicative accuracy" concerns. The context of the speedy trial clause, in the Sixth Amendment, amongst other rights thought necessary to fairness and avoidance of official oppression, make

that clear. The other Sixth Amendment guarantees of "public trial" "impartial jury", "in the State and district", "to be informed of the nature and cause of the accusation", confrontation, compulsory process, and counsel, are all rights intended to prevent governmental abuse and to ensure adjudicative accuracy, as the framers understood it.

To now carve out an exception for delays which are both (1) prejudicial to the defense, and (2) not caused by the defense, is to subvert the framer's intent. *McDonald* and *Loud Hawk* carve out such an exception. The Court needs to return to the Framer's intent of preventing trials which cannot be fair because of long delays.

CONCLUSION

The twenty-five year delay between the first filing of the charge and the first scheduled trial date was prejudicial to presenting a full and fair defense, was not caused in any way by Mrs. Humphrey, and was the kind of delay the framers sought to avoid in requiring speedy trials in the Sixth Amendment. That Constitutional requirement has been subverted by the lower courts' reading of *MacDonald* and *Loud Hawk*, and by ignoring the correction and re-emphasis on fairness and adjudicative accuracy found in *Doggett*.

This case is a proper one in which to correct the misreading of the Sixth Amendment current in the lower courts.

For these reasons, Rita Ann Humphrey's Petition For Certiorari should be granted.

Respectfully submitted,

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Dated: November 14, 2005

APPENDIX A

IN THE SUPREME COURT, STATE OF WYOMING

2005 WY 131

OCTOBER TERM, A.D. 2005

October 6, 2005

THE STATE OF WYOMING,	)	
Petitioner,	)	
v.	)	**No. 05-2**
RITA ANN HUMPHREY,	)	
Respondent.	)	

Petition for Writ of Review

Representing Petitioner:

Patrick J. Crank, Wyoming Attorney General; Paul S. Rehurek, Deputy Attorney General; D. Michael Pauling, Senior Assistant Attorney General; Michael A. Blonigan, Special Assistant Attorney General; and Ryan P. Healy, Special Assistant Attorney General. Argument by Mr. Blonigan.

Representing Respondent:

Michael J. Krampner, Casper, Wyoming.

Before HILL, C.J., and GOLDEN, KITE, VOIGT, and BURKE, JJ.

GOLDEN, Justice.

[¶1] This Court granted the State's petition for writ of review to determine whether the district court erred in dismissing, on speedy trial grounds, the first degree murder charge against Rita Ann Humphrey. We hold the district court erred as a matter of law in relying upon the lapse in time between the dismissal of the initial first degree murder indictment and the filing of the instant information in holding that Humphrey's constitutional right to a speedy trial was abridged. Accordingly, we reverse and remand for further proceedings.

ISSUES

[¶2] The State presents the following issue for our review:

> Did the district court err in including time when no charges were pending in determining whether the Respondent's rights under the Speedy Trial Clause of the Sixth Amendment to the United States Constitution and Article One, Section 6 of the Wyoming Constitution were violated?

While Humphrey has phrased the issue somewhat differently than the State, the thrust of the issues she presents is essentially the same as that posed by the State.

FACTS

[¶3] The procedural history of this case is not in dispute. On November 23, 1977, Jack Humphrey, Rita Humphrey's (Humphrey) husband, died from a single gunshot wound to the head. On April 11, 1980, a grand jury returned an indictment against Humphrey, charging her with first

degree murder in the death of her husband. Humphrey was arrested that same day. Three days later, Humphrey requested, and was later granted, a preliminary hearing. The parties stipulated to a June 23, 1980, hearing date, and Humphrey waived her right to a speedy preliminary hearing. The preliminary hearing failed to produce sufficient probable cause to support the murder charge, and the county court judge dismissed the case on July 2, 1980. The district court formally dismissed the indictment on August 22, 1980.

[¶4] The State reopened the investigation into Jack Humphrey's death in 1999. On March 5, 2004, the State once again arrested Humphrey and charged her with the first-degree murder of her husband. Following a preliminary hearing on May 26, 2004, Humphrey was bound over to district court.

[¶5] Humphrey's trial was initially set for September 27, 2004, stacked with other criminal trials. On July 8, 2004, Humphrey filed a motion requesting that a "date certain" be set for her trial. A month later, Humphrey appeared at her arraignment and entered a plea of not guilty to the charge. A scheduling conference was held on August 25, 2004, and the parties agreed to a January 3, 2005, trial date.

[¶6] Two days later, on August 27, 2004, Humphrey filed a motion to dismiss the first degree murder charge for lack of a speedy trial as guaranteed by the United States and Wyoming Constitutions. Humphrey premised her speedy trial claim on the 24-year lapse in time between the filing of the initial indictment in 1980 and the filing of the instant information. She claimed the State's delay in pursuing the case to trial substantially prejudiced her

ability to defend against the charge. The State filed its response to the motion on September 15, 2004. In addition to the initial motion and response, the parties filed numerous other pleadings and documents supporting their respective positions regarding Humphrey's speedy trial claim.

[¶7] The district court heard testimony and argument on Humphrey's speedy trial motion on October 28, 2004, and took the matter under advisement. On December 2, 2004, the district court issued a decision letter stating it was granting Humphrey's motion to dismiss. The district court entered its order dismissing the case on December 20, 2004. The State filed the instant petition for writ of review seeking reversal of the district court's order, which this Court granted on January 25, 2005.

STANDARD OF REVIEW

[¶8] This Court examines de novo the constitutional question of whether a defendant has been denied a speedy trial in violation of the Sixth Amendment to the United States Constitution and Art. 1, § 10 of the Wyoming Constitution. *Warner v. State*, 2001 WY 67, ¶ 9, 28 P.3d 21, 26 (Wyo.2001). We review the district court's factual findings for clear error. *Id.*

DISCUSSION

[¶9] The Sixth Amendment to the United States Constitution and Art. 1, § 10 of the Wyoming Constitution guarantee that the accused shall enjoy the right to a speedy trial. In determining whether a defendant has been denied a speedy trial, this Court adheres to the test

enunciated in *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972). *Berry v. State*, 2004 WY 81, ¶ 31, 93 P.3d 222, 230 (Wyo. 2004); *Caton v. State*, 709 P.2d 1260, 1263-64 (Wyo. 1985); *Cosco v. State*, 503 P.2d 1403, 1405 (Wyo. 1972). The *Barker* test requires the balancing of four factors: the length of the delay; the reason for the delay; the defendant's assertion of his right to a speedy trial; and the prejudice to the defendant. *Berry*, ¶ 31, 93 P.3d at 230-31. None of these factors alone is sufficient to establish a speedy trial violation. Rather, they must be considered together and balanced in relation to all relevant circumstances. *Id.* at 231; *Warner*, ¶ 10, 28 P.3d at 26. If a speedy trial violation is found to have occurred, the charge must be dismissed. *Id.*; *Barker*, 407 U.S. at 522, 92 S.Ct. at 2188.

[¶10] Our primary focus in this case is the district court's conclusion regarding the first factor of the *Barker* test, the length of delay attendant to the criminal proceedings. In finding a speedy trial violation, the district court considered the entire period between the initial April 11, 1980, indictment and the January 3, 2005, trial date, constituting a delay of approximately twenty-four years and eight months. The court then used the twenty-four-year time frame as the foundation upon which it based its further analysis.

[¶11] The State contends that the district court erred in its computation of the length of delay. We agree. The speedy trial clock begins to run upon arrest or when charges are filed. *Harvey v. State*, 835 P.2d 1074, 1078 (Wyo. 1992). *See also United States v. MacDonald*, 456 U.S. 1, 6-7, 102 S.Ct. 1497, 1501, 71 L.Ed.2d 696 (1982); *United States v. Marion*, 404 U.S. 307, 314-15, 92 S.Ct. 455, 460, 30 L.Ed.2d 468 (1971). However, the speedy trial

guarantee is no longer applicable once charges are dismissed. *MacDonald*, 456 U.S. at 8, 102 S.Ct. at 1502. In *MacDonald*, the United States Supreme Court held that a delay which occurs between the dismissal of a charge and the subsequent refiling of the charge does not count in speedy trial calculations. *Id.* at 6-10, 102 S.Ct. at 1501-03. Four years later, the Supreme Court reemphasized that the Speedy Trial Clause has no application to the period of time in which a defendant is neither under arrest nor formally charged. *United States v. Loud Hawk*, 474 U.S. 302, 106 S.Ct. 648, 88 L.Ed.2d 640 (1986).

[¶12] The district court correctly determined the speedy trial clock in the instant case initially began to run when the indictment was filed and Humphrey was arrested in 1980. However, the district court erred in failing to stop the clock when the indictment was dismissed a few months later. The speedy trial clock only resumed running again when the second murder charge was filed against Humphrey on March 5, 2004. The twenty-four-year gap between the dismissal of the first charge and the filing of the second charge is excluded from the speedy trial clock.

[¶13] Humphrey initially argues that *MacDonald* and *Loud Hawk* have been implicitly overruled by *Doggett v. United States*, 505 U.S. 647, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992). We disagree. *Doggett* is in accord with *MacDonald* and *Loud Hawk* on the issue pertinent to our review. In *Doggett*, the Supreme Court expressly reaffirmed its holding in *MacDonald* and *Loud Hawk* that "the Sixth Amendment right of the accused to a speedy trial has no application beyond the confines of a formal criminal prosecution." *Doggett*, 505 U.S. at 655, 112 S.Ct. at 2692. The formal criminal prosecution begins when "a defendant is indicted, arrested, or otherwise officially accused" and

ends when "the Government, acting in good faith, formally drops charges." *MacDonald*, 456 U.S. at 6-7, 102 S.Ct. at 1501. Contrary to Humphrey's contentions, *Doggett* clearly adheres to the *MacDonald* formula for computing the length of delay applicable to a speedy trial analysis.

[¶14] Turning to Wyoming law, Humphrey argues that Wyoming precedent mandates consideration of the entire time period from the filing of the initial charge to the ultimate date of trial, regardless of whether that trial stems from the initial charge or a subsequent charge, citing *Caton v. State*, 709 P.2d 1260 (Wyo. 1985), and *Berry v. State*, 2004 WY 81, 93 P.3d 222 (Wyo. 2004). Humphrey misreads *Caton* and *Berry*. In both cases, this Court limited the time periods relevant to speedy trial analysis to those during which formal criminal prosecutions were pending. *Caton*, 709 P.2d at 1264; *Berry*, ¶¶ 32-33, 93 P.3d at 231-32.

[¶15] *Caton* very specifically demonstrates that the time period between charges arising from the same criminal act are not included in the speedy trial calculation. In *Caton*, the initial information against Caton was filed on July 19, 1983. Ultimately, due to some confusion regarding what charges should be brought against Caton, three different informations were filed against him. The trial was finally held on August 29, 1984. *Caton*, 709 P.2d at 1263. Caton appealed, alleging in part that he was denied a speedy trial. This Court initially noted that the speedy trial calculation was not affected by the fact that the State changed the charges against Caton during the course of the formal criminal prosecution. In response to argument by the State, this Court reaffirmed that the speedy trial period begins to run upon the filing of formal charges and continues to run during the entire time the defendant

remains under charge. If one charge is dismissed and supplanted by a different charge, the time the defendant is under either charge will be tacked as long as the different charges relate to the same criminal act. *Id.* at 1264.

[¶16] For our purposes, the more important aspect of *Caton* is this Court's actual computation of time. At one point, while awaiting trial, the State dismissed its then current information against Caton and did not file a new information against Caton until two days later. This Court, in accord with *MacDonald*, considered only the time that Caton was under formal charge, excluding from its speedy trial calculation the two-day period when no charges were pending against him. *Id.* at 1264. The result was that this Court, in its speedy trial calculation, considered the period of time from the filing of the initial information up until the dismissal of the first two informations.[1] This Court then excluded the two-day time period from that dismissal until the filing of the third information. With the filing of the third information, this Court resumed its calculation and considered the time period between the filing of the third information and trial.

[¶17] *Berry* likewise does not support Humphrey's contention. The primary analysis in *Berry* concerned how to compute the length of delay for speedy trial purposes when a defendant is held in continuous custody from the time of initial arrest to trial. *Berry*, ¶¶ 32-33, 93 P.3d at 231-32. Clearly, that analysis is not applicable in the instant case. This Court did, however, present discussion

---

[1] Both the first and second informations were pending against Caton at the same time.

on some fundamental principles generally applicable to computing time for speedy trial analysis:

> Once the defendant's speedy trial right has attached, it "continues until the defendant is convicted, acquitted or a formal entry is made on the record of his case that he is no longer under indictment." *This is commonly taken to mean that in the event of reindictment the date of the original arrest or charge is still controlling, but that the time between the dismissal and recharging are [sic] not counted, provided of course that the defendant is not held in custody in the interim awaiting the new charge.*

Berry, ¶ 32, 93 P.3d at 231 (emphasis in original) (quoting LaFave, Israel and King, 4 *Criminal Procedure* § 18.1(c), pp. 670-71). The *Berry* decision rested upon the fact Berry was held in continuous custody. Humphrey was not held in custody during the twenty-four-year period between the time the first charge against her was dismissed and the second charge was filed. Therefore, the time between the dismissal and recharging is not counted.

CONCLUSION

[¶18] We hold that the twenty-four years between the dismissal and refiling of charges must be excluded when computing the length of delay for constitutional speedy trial purposes. We therefore reverse the order of the district court and remand the case to the district court for further proceedings consistent with this opinion. Should the occasion arise, the district court must recalculate the length of delay, excluding the twenty-four-year time period. This new calculation will necessarily require the

district court to engage in a new analysis under the four-part *Barker* test.

APPENDIX B

STATE OF WYOMING	)	IN THE DISTRICT COURT
	) ss.	
COUNTY OF NATRONA	)	SEVENTH JUDICIAL DISTRICT
		Criminal Action No. 16305-B

THE STATE OF WYOMING,)
Plaintiff,)
vs.)
RITA ANN HUMPHREY,)
Defendant.)

ORDER OF DISMISSAL FOR VIOLATION OF SPEEDY TRIAL RIGHTS

(Filed Dec. 20, 2004)

THIS MATTER came before the Court on October 28, 2004, for hearing on Defendant's Motion to Dismiss for Violation of Defendant's Right to a Speedy Trial and Defendant's Motion to Dismiss for Due Process violation of Fourteenth Amendment of the United States Constitution and Article 1 Section 6 of the Wyoming Constitution. The Defendant was present and represented by her attorney, Michael J. Krampner. The State was represented by Michael A. Blonigen, District Attorney of Natrona County, Wyoming.

Whereupon, the Court proceeded to hear the evidence presented and to review the file and record herein, and to study the cases cited by the parties and other cases, and being fully advised in the matter FINDS AS FOLLOWS:

1. The Court has jurisdiction of the subject matter and the parties to the action.

2. For the reasons more fully stated in the Court's Decision Letter of December 2, 2004, the Defendant's Motion to Dismiss for Violation of Defendant's Right to Speedy Trial should be granted.

3. The Court's Decision Letter of December 2, 2004, is attached hereto and incorporated herein as if fully set forth in this Order.

4. A violation of Defendant's right to a speedy trial occurred in that there has been a dely [sic] of over twenty-four (24) years between the first filing of the same charge and the first scheduled trial date; Defendant asserted her speedy trial rights in 1980 and again in 2004; Defendant is not in any way responsible for the delay and no reasonable explanation for the delay has been presented by the State; significant evidence has been lost, disappeared or destroyed; persons having knowledge of substantial facts have died since the case was first dismissed for lack of probable cause in 1980 creating substantial prejudice to the Defendant's ability to present a defense and to a fair trial.

5. As decision on the speedy trial motion is dispositive, no other matters before the Court in this case, including the Due Process Motion, need to be decided.

NOW, THEREFORE, IT IS HEREBY ORDERED that the information in the above-entitled action should be, and it hereby is, DISMISSED, and;

IT IS FURTHER ORDERED that the Defendant's bond and any sureties thereon are discharged.

DATED AND SIGNED this 17th day of December, 2004.

BY THE COURT:

/s/ W. Thomas Sullins
Hon. W. Thomas Sullins
District Court Judge

APPROVED AS TO FORM:

/s/ Michael J. Krampner
Michael J. Krampner
Attorney for Defendant

/s/ Michael A. Blonigen
Michael A. Blonigen
District Attorney

STATE OF WYOMING

SEVENTH JUDICIAL DISTRICT COURT

[Names And Addresses Omitted In Printing]

[SEAL]

December 2, 2004

Michael A. Blonigen
Office of the District Attorney
200 North Center Street,
Suite 300
Casper, Wyoming 82601

Michael J. Krampner
Krampner, Fuller &
Hambrick, L.L.C.
242 South Grant Street
Casper, Wyoming 82601

RE: *The State of Wyoming v. Rita Ann Humphrey*
Seventh Judicial District Court
Natrona County, Wyoming
Criminal Action No. 16305-B

DECISION LETTER

Gentlemen:

The referenced case comes before the court for ruling on the Defendant's Motion to Dismiss for violation of

Defendant's Right to Speedy Trial filed August 27, 2004, and the Defendant's Motion to Dismiss for Due Process violation of Fourteenth Amendment of the United States Constitution and Article 1 Section 6 of the Wyoming Constitution filed September 10, 2004. Hearing on the motions was held October 28, 2004. After hearing argument, the court took the motions under advisement to allow for further consideration of the briefs submitted and the case law cited.

The court has now had an opportunity to fully research the issues presented. A close reading has been made of the motions and the Defendant's Supplemental Authorities Regarding Constitutional Speedy Trial violation filed September 10, 2004, the State's Response to Defendant's Motions to Dismiss for Lack of Speedy Trial and Violation of the Due Process Clause filed September 15, 2004, the Defendant's Reply to State's Submission Regarding Speedy Trial and Due Process filed September 22, 2004, the Additional Authority to state's Response to Defendant's Motions to Dismiss for Lack of Speedy Trial and Violation of Due Process Clause filed October 5, 2004, the Defendant's submission of Documents Related to Speedy Trial and Due Process filed October 13, 2004, and the State's Response to Defendant's Submission of Documents Related to Speedy Trial and Due Process filed October 22, 2004. Additionally, a review has been made of the witness testimony and the exhibits introduced into evidence at the motion hearing. Based upon the research undertaken, the court finds that given the delay of over twenty four (24) years in bringing the charge against the Defendant to trial, with the Defendant having asserted her right to a speedy trial as early as 1980, and with the delay having resulted in lost evidence substantially

prejudicing the defense, the clear mandate of the case law of the State of Wyoming requires the case be dismissed for violation of the Defendant's constitutional right to a speedy trial.

Background – Dates and Events

The dates and events of importance to the evaluation of the speedy trial and due process questions presented in this case include the following:

- November 23, 1977 – death of Jack Humphrey
- November 23, 1977 to Spring 1980 – Natrona County Sheriff's Office, Evansville Police Department, and Division of Criminal Investigation investigate the death of Jack Humphrey
- March 15, 1978 – Coroner's inquest held which found that Jack Humphrey died on November 23, 1977 from a gun shot wound to the head (right side) by person or persons unknown
- April 11, 1980 – Defendant indicted and arrested on the charge of murder in the first degree, WYO. STAT. § 6-4-101 (1977)
- April 21, 1980 – Defendant files Motion to Dismiss for Lack of Speedy Trial and for Violation of Rule 45(b), Wyoming Rules of Criminal Procedure
- April 25, 1980 – Defendant arraigned in the Seventh Judicial District Court and enters a plea of "not guilty"
- April 30, 1980 – Defendant files Motion to Dismiss for Pre-Accusation Delay

- May 7, 1980 – Stipulation for Setting of Preliminary Hearing and Order entered setting a preliminary hearing to be held before the County Court for Natrona County on June 23, 1980
- May 7, 1980 – Defendant files Waiver waiving the requirement for a preliminary hearing to be held within twenty (20) days, but providing "This is not a waiver of the defendant's right to a speedy trial as afforded by the Sixth Amendment to the United States Constitution and Article 1, Section 10 of the Wyoming Constitution and is not to be construed as such."
- June 23 to 27, 1980 – Preliminary hearing held
- July 3, 1980 – Order of the County Court for Natrona County entered dismissing the case with the finding "there is not probable cause to bind the above-entitled matter over to the District Court. . . ."
- August 22, 1980 – Order of dismissal entered in the Seventh Judicial District Court
- March 5, 2004 – Defendant recharged by information and again arrested on the charge of murder in the first degree, WYO. STAT. § 6-4-101 (1977)
- May 26, 2004 – Defendant bound over after preliminary hearing on the refiled charge of murder in the first degree
- August 10, 2004 – Defendant arraigned on the refiled charge in the Seventh Judicial District Court and enters a plea of "not guilty"
- August 25, 2004 – Scheduling conference held which results in the case being set for trial beginning January 3, 2005

Discussion

A. Constitutional Right to Speedy Trial.

Defendant urges that the charge against her in this case be dismissed for violation of her constitutional right to a speedy trial. Her claim is grounded in the guaranty to a speedy trial provided for in the constitutions of the United States and the State of Wyoming.

The Sixth Amendment to the Constitution of the United States of America provides:

> **In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial**, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by the law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

(emphasis added). The Fourteenth Amendment to the United States Constitution makes its federal constitutional Sixth Amendment guarantees obligatory on the states. *Cherniwchan v. State*, 594 P.2d 464, 467 (Wyo. 1979).

Article 1, § 10 of the Constitution of the State of Wyoming reads:

> **In all criminal prosecutions the accused shall have the right** to defend in person and by counsel, to demand the nature and cause of the accusation, to have a copy thereof, to be confronted with the witnesses against him, to have

> compulsory process served for obtaining witnesses, and **to a speedy trial** by an impartial jury of the county or district in which the offense is alleged to have been committed. When the location of the offense cannot be established with certainty, venue may be placed in the county or district where the corpus delecti [delicti] is found, or in any county or district in which the victim was transported.

(emphasis added). Wyoming's constitutional provision, similar to the Sixth Amendment of the federal constitution (*State v. Yazzie*, 67 Wyo. 256, 218 P.2d 482 (1950)), guarantees the accused a speedy trial and this guaranty reaches out to protect the rights if convicts. *State v. Keefe*, 17 Wyo. 227, 98 P. 122, 131 (1908).

The parties properly direct the court to the long-recognized test to be used in making an analysis of the speedy trial claim asserted by the defense in the case at bar. That constitutional analysis requires consideration of the four factors articulated in *Barker v. Wingo*, 407 U.S. 514, 530, 92 S.Ct. 2182, 2192, 33 L.Ed.2d 101 (1972), and adopted by the Supreme Court of Wyoming in *Cosco v. State*, 503 P.2d 1403, 1405 (Wyo. 1972), *cert. denied*, 411 U.S. 971 (1973). As recently confirmed by the Supreme Court of Wyoming, the analysis requires consideration of four factors: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) the prejudice to the defendant. *Berry v. State*, 93 P.3d 222, 231 (Wyo. 2004). These factors must be considered together and balanced in relation to all relevant circumstances. *Harvey v. State*, 774 P.2d 87, 92 (Wyo. 1989). The burden is upon the State to prove delays in bringing the defendant to trial are reasonable and necessary. *Harvey*, 774 P.2d at 95. However, the burden of providing prejudicial

delay in a speedy trial argument lies with the defendant. *Rodiack v. State*, 55 P.3d 1, 34 (Wyo. 2002).

1. Length of Delay.

There is no precise length of delay that automatically constitutes a constitutional violation of the speedy trial right. *Phillips v. State*, 597 P.2d 456, 460 (Wyo. 1979). However, as noted by the defense, in the recent case of *Barry v. State*, the Wyoming Supreme Court held that a delay between initial charging and trial of less than two (2) years required dismissal of the charges on speedy trial grounds. In the matter hereunder review, the delay between the initial charging and the scheduled trial in January 2005, is over twenty four (24) years in length.

In the case at hand, the Defendant was indicted and arrested on the charge of murder in the first degree on April 11, 1980. She was arraigned in the Seventh Judicial District Court on April 25, 1980. That initial charge was dismissed by order of the Natrona County Court entered July 3, 1980, and by order of the Seventh Judicial District Court entered August 22, 1980. Thereafter, no action was taken by the prosecution until the refilling of the same charge by information field March 5, 2004. That delay of over twenty (20) years is urged by the defense to be included n the analysis of the length of delay, and urged by the prosecution to be excluded from the analysis.

The filing of the criminal complaint or arrest of the defendant begins the speedy trial clock under the constitutional analysis. *Campbell v. State*, 999 P.2d 649, 655 (Wyo. 2000). Stated a bit differently, "the speedy trial clock starts to run upon arrest or when the complaint is filed." *Harvey*, 774 P.2d at 94. If the period of time is accordingly

calculated in the situation presented in the case here being reviewed, with the filing of the initial indictment and arrest of the Defendant on April 11, 1980, and the trial date scheduled to begin on January 3, 2005, there would be a delay of approximately twenty four (24) years and eight (8) months.

Wyoming case law supports the above calculation of a length of delay of over twenty four (24) years. The case of *Canton v. State*, 709 P.2d 1260, 1264 (Wyo. 1985), holds that when one charge is dismissed and supplanted by another, the speedy trial calculation is not affected, and the periods of formal charge by a single sovereign for the same criminal act are tacked even if the charges are different. In accord, the ruling in the case of *Harvey v. State*, 835 P.2d 1074, 1078 (Wyo. 1992), confirms that the speedy trial time runs from the filing of the first complaint and not the refiling of other charges, until the date of trial Additionally, the opinion in the *Barry* case, which analyzed whether an initial arrest or subsequent arrest should start the speedy trial analysis, states:

> . . . It is difficult to generalize about this situation, except to say that *the date of the first charge is more likely to be deemed controlling if the second charge by the same sovereign is a refinement of the first* rather than a charge of different crimes arising out of the same incident. . . .

Barry, 93 P.3d at 231, citing LaFave, Israel and King, 4 *Criminal Procedure* § 18.1(c).

It is necessary to conclude in the matter at hand that the length of delay is both presumptively prejudicial and significantly long. See *Philips v. State*, 835 P.2d 1062, 1069 (Wyo. 1992). Further, the State has failed to meet its

burden to prove that the delays in bringing the Defendant to trial in this case are reasonable and necessary. *Barry*, 93 P.3d at 231.

2. Reason for Delay.

Delays attributable to the defendant may disentitle him to speedy trial safeguards. *Harvey*, 774 P.2d at 94. In the case at hand, there is no showing of any delay attributable to the Defendant or defense counsel. While there was a short period of time in May 1980, when Defendant agreed to waive the requirement for a preliminary hearing within the twenty-day period required by rule, such waiver was given with the express statement that the delay was stipulated to without a waiver of her rights to a speedy trial. In any event, such brief delay would be insignificant to the delay of over twenty four (24) years at issue in this matter.

In the case of *Wehr v. State*, 841 P.2d 104, 112 (Wyo. 1992), the following guidelines were invoked for determination for the weight to be given to delay attributable to the prosecution:

> A deliberate attempt to delay the trial in order to hamper the defense should be weighed heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay. (citation omitted).

There has been no showing of any deliberate attempt to delay the trial in this case. Nor has any evidence been presented indicating that the delay is attributable to negligence, overcrowded courts, or a more neutral reason. Finally, it does not appear that any other valid reason has been shown to justify the lengthy delay between the dismissal of the initial charge and the refiling of the same identical charge over twenty years later. While the record does reference an additional investigation and interviewing of witnesses, it does not appear that there is any missing witness or other evidence that was not available to investigators during the initial investigation of this case from November 23, 1977 to the Spring of 1980.

3. Defendant's Assertion of Her Right.

In the action hereunder review, the Defendant initially asserted her speedy trial rights on April 21, 1980. On that date, her legal counsel filed and served on the prosecution a Motion to Dismiss for Lack of Speedy Trial and for Violation of Rule 45(b), Wyoming Rules of Criminal Procedure. Such motion has been held to properly assert a right to speedy trial. *Caton*, 709 P.2d at 1266. It does not appear that the Defendant, at any time, waived her speedy trial demand. The demand was reasserted by Defendant's Motion to Dismiss for Violation of Defendant's Right to Speedy Trial filed August 27, 2004. In any event, it is uncontested that Defendant asserted her speedy trial rights in this case, and that no delay in speedy trial can be attributed to her.

4. Prejudice to the Defendant.

The speedy trial analysis in this case, without any doubt, results in a conclusion that the prejudice suffered by the defendant as a result of the delay in bringing her to trial is significant. The prejudice may consist of "1) lengthy pretrial incarceration; 2) pretrial anxiety; and 3) impairment of the defense." *Harvey*, 774 P.2d at 96. Based upon the evidence presented at hearing, the substantial impairment of the defense results in a finding of prejudice to the Defendant.

The Defendant asserts that "[t]he matters of prejudice most significant in this case are the death of important witnesses, the disappearance or loss of important evidence, and the scattering of witnesses who are now either out of state or cannot be found at all." The witnesses and items of evidence that because of the passage of time are now unavailable include the following:

a. Ronald L. Ketchum, deceased – investigator on the case for the Natrona County Sheriff's Office, who interviewed witnesses in the case (including the Defendant).

b. Art Terry, deceased – investigator on the case for the Natrona County Sheriff's Office, who interviewed witnesses in the case (including the Defendant).

c. .243 Winchester caliber Ruger M77 rifle – examined by the Federal Bureau of Investigation, and asserted to be the weapon causing the death of Jack Humphrey.

d. Watch of Jack Humphrey – examined by the Federal bureau of Investigation and found to have gunpowder particles.

e. X-ray(s) of Jack Humphrey's skull – an x-ray report of R.P. Mattson, M.D. noted an entry wound most likely on the left side of the cranium.

f. Billy Johnston, deceased – witness to statements of Defendant, and events potentially relevant to issues in the case.

g. Helen Johnston, deceased – witness to statements of the Defendant, and events potentially relevant to issues in the case.

h. Transcript/tape of preliminary hearing held in the case June 23-27, 1980.

i. Natrona County Sheriff's Office audio tapes of witness statements taken in connection with the investigation into the death of Jack Humphrey.

j. Natrona County Sheriff's Office transcripts of statements of witnesses taken in connection with the investigation of the death of Jack Humphrey.

k. Natrona County Sheriff's Office reports on the polygraph examinations taken in connection with the investigation of the death of Jack Humphrey, including that of Defendant.

l. Records and files of Neil J. Short, Defendant's attorney in the 1980 proceedings in the case.

m. Records and files of Janet Garner, including witness statements taken in connection with her function as a prior legal investigator for Defendant.

n. Numerous financial records of Guaranty Federal Savings and Loan, Hilltop National Bank, and Security Bank and Trust Company subject to search warrants executed on those entities in October 1978.

The above listing is not inclusive, as there are numerous other items of evidence claimed to now be lost. The list, however, does demonstrate that the Defendant has met her burden of showing that a pretrial delay has impaired the capacity of the accused to prepare her defense. *Boggs v. State*, 484 P.2d 711, 715 (Wyo. 1971). Therefore, while the situation presented is not one that involves a lengthy pretrial incarceration, nor pretrial anxiety, the showing of an impairment to the defense has been made. The court would find that the prejudice to the Defendant by the delay of over twenty four (24) years in having the charge in this case brought to trial has been demonstrated to be substantial.

5. Balancing Test.

Weighing the four elements of the speedy trial balancing test, it is necessary to conclude that the Defendant's right to a speedy trial has been violated in this case. The length of the delay is over two decades, no cause of the delay can be attributed to the Defendant, the Defendant asserted her right to a speedy trial back in 1980, and there has been a showing of substantial prejudice occasioned by the delay in bringing the charge to trial. As a result, the necessary conclusion is that the Defendant's constitutional right to a speedy trial has been violated.

B. Constitutional Right to Due Process

Given the court's decision dismissing this case for violation of Defendant's speedy trial rights, no ruling on the Defendant's Motion to Dismiss for due Process Violation of Fourteenth Amendment of the United States

Constitution and Article 1 Section 6 of the Wyoming Constitution is required.

Preparation of Order

Mr. Krampner is requested to prepare an order granting the Defendant's Motion to Dismiss for Violation of Defendant's Right to Speedy Trial filed August 27, 2004, in accord with the rulings set forth in the Decision Letter. The proposed order should be submitted to Mr. Blonigen for his approval as to form.

Respectfully,

/s/ W. Thomas Sullins
W. Thomas Sullins

WTS:Kmn